IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 28642 of 2007(I)

PETITIONER:

V.H.NABEESA BEEVI, AGED 56 YEARS,
W/O SAINUL ABDHEEN RAWTHER,
THACHERI MADOM, VAIKOM.

BY ADV. SRI.V.J.JOHN
SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.C.I.ABRAHAM
SRI.JOSE KURIAKOSE (VILANGATTIL)

RESPONDENTS:

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1. THALAYOLAPARAMBU GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
THALAYOLAPARAMBU P.O., KOTTAYAM DISTRICT.

2. FIROZ, S/O SHEREEF,
ARITHARATHUCHIRA HOUSE, VADAKKEMURI,
UDAYANAPURAM P.O., VAIKKOM TALUK.

R1 BY ADV. SRI.LAL GEORGE
R2 BY ADV.SRI.M.C.CHERIAN
SRI.M.A.THOMAS KUTTY
SMT.ASHA CHERIAN
SRI.P.M.SANEER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.28642 of 2007

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Dated: 23rd October, 2007

JUDGMENT

The petitioner, a widow who claims to be conducting a meat stall, namely, 'Padinjare Meat Stall' situated in the fish market of Thalayolaparambu Public Market belonging to the first respondent-Panchayat has filed this Writ Petition under Article 226 of the Constitution arraying the Panchayat(1st respondent) and one Firoz (2nd respondent) seeking to quash the decision taken by the 1st respondent-Panchayat not to renew the licence which had been given to the petitioner for conducting sale of meat and to grant the same to the 2nd respondent. The petitioner also prays for a declaration that the action of the first respondent in not renewing licence to the petitioner and issuing licence to the 2nd respondent is illegal. The petitioner also prays that the Panchayat be directed to allow the petitioner to conduct the business, i.e. sale of meat, in the Padinjare Meat Stall on the same terms and conditions till the final disposal of the Writ Petition. Various grounds are raised in the Writ Petition and inter alia it is urged that the Panchayat took a very hasty decision with some ulterior motives on account of the influence of the 2nd respondent who is having considerable political clout with the ruling

party in the Panchayat. The petitioner is having a licence to conduct the meat stall till 30.9.2007 and the circumstance that the decision not to renew licence to the petitioner was taken as early as on 31.8.2007 itself is sufficient to prove the mala fides of the 1st respondent. It is urged that the 2nd respondent is an employee of the petitioner and the decision to give licence to him proves the collusion between respondents 1 and 2. The procedure adopted, it is urged, is quite illegal and irregular in as much as the decision which visits the petitioner with civil consequences was taken without hearing the petitioner. The decision of the Panchayat is thus violative of all principles of natural justice.

2. The Panchayat has filed a detailed counter affidavit justifying its action. It is stated in the counter affidavit that in the absence of any licensed slaughter house in the market, temporary licence for three months period had been granted to the petitioner for conducting the meat stall in the western portion of the public market and the validity of that licence expired on 30.6.2007. Thereafter, no licence fee or deposit as required under the rule and no fresh agreement was executed between the petitioner and the Panchayat for renewing licence. That is why Ext.P1 notice was issued to the

petitioner calling upon her to pay licence fee and to execute the required agreement for renewing licence. There was no response to the said notice from the side of the petitioner. Thereafter another notice was issued to the petitioner. Ext.R1(a) is copy of the notice and Ext.R1(b) is the copy of the postal receipt evidencing issuance of the above notice. The petitioner was informed in Ext.R1(a) that if no further action is taken pursuant to the notice, the licence will not be renewed. There was no response to this notice also. Accordingly, it was decided by the Panchayat to issue one more notice giving her three days time for remitting the licence fee and executing the agreement. Ext.R1(c) is the copy of the said notice and Ext.R1(d) is the copy of the postal receipt evidencing issuance of Ext.R1(c) notice. To Ext.R1(c) also there was no response. It is stated that the allegation of the petitioner that though the Panchayat was approached for remitting fees and producing stamp paper, the Panchayat deliberately in collusion with the 2nd respondent refused to accept the same is without an iota of truth. It was under such circumstances that resolution No. III(a) dated 30.8.2007 was adopted by the Panchayat deciding to cancel the licence which had been decided to be renewed but not renewed on account of non-

payment of licence fee and non-execution of fresh agreement. Ext.R1 (e) is copy of the above resolution. Based on Ext.R1(e), Ext.R1(f) notice was sent to the petitioner. Ext.R1(e) decision was published in the notice board of the Panchayat and affixture was also effected in the premises of the meat stall. Ext.R1(g) is copy of the public notice. Later as per publice notice dated 4.9.2007, tenders were invited for the auction of the said stall. Ext.R1(h) is the public notice. Pursuant to Ext.R1(h), several tenders were received by the Panchayat. The Panchayat Committee which was held on 17.9.2007 considered the tenders and it was seen that the 2nd respondent was the highest bidder. This was why Ext.R1(i) resolution was adopted by the Panchayat on 17.9.2007 deciding to accept the tender submitted by the 2nd respondent. Pursuant to Ext.R1(i), letter was sent to the 2nd respondent directing him to deposit the bid amount and produce the requisite stamp paper. Work order was given to him. Pursuant to that the 2nd respondent is authorised and is entitled to conduct the business in the said stall with effect from 1.10.2007. The counter affidavit goes on to refute all the allegations levelled by the petitioner against the Panchayat and the 2nd respondent and justifies the action of the Panchayat.

3. The 2nd respondent has also filed a detailed counter affidavit denying the allegations and refuting the grounds. Ext.R2(a), copy of the publice notice issued by the Panchayat on 4.9.2007 inviting tenders is produced. It was pursuant to Ext.R2(a) that the 2nd respondent submitted tender quoting highest amount of Rs.26,800/-. Ext.R2(b) is copy of the resolution of the Panchayat Committee deciding to accept the 2nd respondent's tender and to issue licence in favour of the 2nd respondent. Pursuant to Ext.R2(b), Ext.R2(c) letter was received by the 2nd respondent pursuant to which the first instalment of Rs.8600/- was remitted on 17.9.2007 and an agreement was executed with the Panchayat. Ext.R2(d) is the receipt against remittance of the 1st instalement and Ext.R2(e) is copy of the agreement. This counter affidavit also goes on to deny the allegations of the petitioner.

5. The petitioner filed a reply affidavit producing three documents, Exts.P3, P4 and P5 along with the same. Ext.P5 is relied on to contend that the bid amount of the 2nd respondent was below the market rate. On hearing the counsel for some time and in view of certain factual controversies which arose, I passed the following interim order on 17.10.2007:

"On an oral application by Adv.V.J.John, counsel for the petitioer, Mr.Eldho Varghese, Advocate of this court is appointed as Commissioner for identifying the building shown in the photograph marked (1) on the reverse as well as the temporary structures shwon in the photograph marked (2). The Commissioner will inspect both these buildings today itself and as far as possible commence inspection at least by 5 P.M. Both parties take notice of the inspection and are permitted to submit work memos. The Commissioner will answer the following questions apart from answering the aspects made mention of in the work memos to be submitted by parties:

(1) Whether the building shown in the photograph marked (1) is slaughter house as alleged by the petitioner.

(2) Whether the structures shown in the photographs marked (2) are in existence and whether the allegation that the same has been demolished yesterday is correct.

The remuneration for the Advocate Commissioner is tentatively fixed at Rs.10,000/- (Rs.Ten Thousand only) which shall be paid by the petitioner. The petitioner shall meet all the expenses for the Commissioner's travel. The petitioner shall make all necessary arrangements to ensure that the Commissioner commences

inspection at 5 P.M. today itself. The two photographs are handed over to the Advocate Commissioner. The Commissioner shall file his report on 18.10.2007. Post on 19.10.2007."

Pursuant to that order the Commissioner conducted inspection and filed report. To that report, the 2nd respondent and the counsel for the Panchayat has filed objections. Thereafter I have heard the submissions of the learned counsel appearing for the parties. Counsel addressed arguments on the basis of the pleadings raised by their respective parties and with reference to the documents placed on record.

6. Having considered the rival submissions addressed at the Bar, I am of the view that the petitioner has not been able to substantiate her ground that the decision of the Panchayat not to permit the petitioner to conduct sale of meat in the market was taken behind year back. The records show that sufficient opportunity had been given to the petitioner and that the petitioner for reasons best known to her did not avail those opportunities. It is evident that the petitioner was having notice regarding the public auction in which the 2nd respondent emerged as the highest bidder. It was open to the petitioner to participate in that auction and to offer a higher bid.

Having chosen not to do so, the petitioner is not justified in impugning the action of the Panchayat. I dismiss the Writ Petition. However, I make it clear that the confirmation of the impugned decision of the Panchayat by this court does not amount to blacklisting the petitioner for the coming years also. The petitioner should also be permitted to participate in the auctions to be notified by the Panchayat for the years to follow.

srd **PIUS C.KURIAKOSE, JUDGE**